

*Amend Env-Wt 305.02(b)(2), eff. 12-24-19 (doc. #12954), cited and to read as follows:*

Env-Wt 305.02 Applicability.

- (b)...(2) Any application filed prior to December 15, 2019 that is not administratively complete, as determined under Env-Wt 310.02 or Env-Wt 312.02, as applicable, as of December 15, 2019, regardless of when the completeness determination is made.

*Amend Env-Wt 306.02, eff. 12-15-19 (doc. #12803), as amended eff. 12-24-19 (doc. #12954), by amending (d), cited and to read as follows:*

Env-Wt 306.02 Activities Eligible For a Lower Scrutiny Approval (LSA). ...

(d) If a PBN is sought for a routine roadway maintenance activity that is within LAC jurisdiction, the application has not been signed to indicate the right to intervene has been waived by the applicable LAC.

*Amend Env-Wt 306.05, eff. 12-15-19 (doc. #12803), as amended eff. 6-2-20 (doc. #13046), by amending (a)(1) intro, cited and to read as follows:*

Env-Wt 306.05 Activities Requiring a Standard Permit: When Standard Permits Are An Option.

- (a)... (1) Have all wetlands delineated and classified by a certified wetland scientist unless:

**Env-Wt 307.04(b) has been withdrawn from this rulemaking**

*Amend Env-Wt 307.05(b), eff. 12-15-19 (doc. #12803), cited and to read as follows:*

Env-Wt 307.05 Protection Against Invasive Species Required.

(b) Equipment to be used in surface waters shall be completely free of all aquatic and terrestrial invasive plants, seeds, and other propagules, and all exotic aquatic species of wildlife as defined in RSA 487:16, I-a.

*Amend Env-Wt 307.10(b) and (g)(1), eff. 12-15-19 (doc. #12803), cited and to read as follows:*

Env-Wt 307.10 Dredging Activity Conditions. ...

- (b) Work shall be done during low flow or in the dry unless:

- (1) A dredge dewatering, diversion, or cofferdam plan has been approved as part of the project;
- (2) The project has specific approval based on water depth to operate from a barge; or
- (3) The work will be conducted in a lake or pond and turbidity containment can be achieved using turbidity controls;

- (g)...(1) Between October 1 and March 31 for any documented occurrence of a cold water fishery or threatened or endangered fishery; or

*Amend Env-Wt 307.11(i)(3), eff. 12-15-19 (doc. #12803), cited and to read as follows:*

Env-Wt 307.11 Filling Activity Conditions. ...

- (i)...(3) Does not cross or have permanent impacts to a perennial stream, marsh, PRA, or vernal pool;

*Amend Env-Wt 307.12(e), eff. 12-15-19 (doc. #12803), cited and to read as follows:*

Env-Wt 307.12 Restoring Temporary Impacts; Site Stabilization. ...

(e) Wetland soils from areas vegetated with purple loosestrife or other state-listed invasive plant species shall not be used in the area being restored;

*Amend Env-Wt 308.05(a)(3) and (c) intro, eff. 12-15-19 (doc. #12803), as amended eff. 12-24-19 (doc. #12954), cited and to read as follows:*

**Env-Wt 308.05 Activation of an SPN.**

(a)...(3) For minimum impact projects to repair or replace culverts or stream crossing structures as provided in Env-Wt 308.04(e), except for routine roadway maintenance under RSA 482-A:3, XVI on land used for agricultural purposes, if the project is within LAC jurisdiction then the LAC has signed the notification to waive its right to intervene.

(c) If the department determines that a notification is administratively complete and that the project as described meets the requirements for an SPN, the department shall, within 5 working days of receipt of the notification, post on its website: ...

*Readopt with amendment Env-Wt 308.06, eff. 12-15-19 (doc. #12803), to read as follows:*

**Env-Wt 308.06 SPN Notifications.** The information required to activate an SPN specified in Env-Wt 308.05 shall be submitted on or with the applicable document identified in Table 308-1, below:

**Table 308-1: SPN Notifications**

<b>Cross-Reference</b>	<b>Type of SPN</b>	<b>Document Name, Identification</b>	<b>Document Date</b>
Env-Wt 308.04(a)	Temporary seasonal dock	Seasonal Dock Notification, NHDES W-06-035	May 2020
Env-Wt 308.04(b)	Timber harvesting (Forestry)	Forestry Notification, NHDES W-06-008	May 2020
Env-Wt 308.04(c)	Recreational trails	Trails Notification, NHDES W-06-040	May 2020
Env-Wt 308.04(d)	Utilities	Utility Notification, NHDES W-06-042	May 2020
Env-Wt 308.04(e)	Culvert repair/replacement	Culvert Repair-Replacement Notification, NHDES W-06-033	May 2020

*Amend Env-Wt 309.01(b)(3)b., eff. 12-15-19 (doc. #12803), as amended eff. 12-24-19 (doc. #12954), cited and to read as follows:*

**Env-Wt 309.01 Applicability; Types of LSAs.**

(b)...(3)...b. Do not impact a PRA, except as provided in Env-Wt 407; and

*Amend Env-Wt 309.02(c)(2), eff. 12-15-19 (doc. #12803), as amended eff. 12-24-19 (doc. #12954), cited and to read as follows:*

**Env-Wt 309.02 Projects Conditionally Authorized By Rule.**

(c)...(2) The project shall not be located in a marsh of any size or a PRA unless specifically authorized;

*Amend Env-Wt 309.02, eff. 12-15-19 (doc. #12803), as amended eff. 12-24-19 (doc. #12954), by inserting paragraph (l), cited and to read as follows:*

**Env-Wt 309.02 Projects Conditionally Authorized By Rule.**

(l) Projects solely for the removal of exotic aquatic weeds (EAW), subject to the following:

(1) The project shall be conducted in accordance with a long-term management plan designed pursuant to Env-Wq 1305.03;

- (2) In flowing waters, harvesting shall be initiated only at the most upstream location of the infestation, where practicable;
- (3) The work shall be conducted by divers who have received training in EAW control diving from a diving instructor who is registered and confirmed with the department's invasive species coordinator;
- (4) The vegetation control shall be done in a manner that avoids impacts that would cause degradation of water quality;
- (5) The project:
  - a. Complies with RSA 487:15 through 25, the New Hampshire Clean Lakes Program; and
  - b. Uses a construction sequence that minimizes impacts to any adjacent PRAs; and
- (6) If the NHB DataCheck identifies any areas of concern relative to protected species or habitat, the project shall incorporate the recommendations of NHF&G and NHB regarding the protected species or habitat.

*Amend Env-Wt 309.04(b), eff. 12-15-19 (doc. #12803), cited and to read as follows:*

Env-Wt 309.04 Information Required for Routine Roadway Maintenance Registrations.

- (b) The registrations required by (a), above, shall be as specified in Table 309-1, below:

Table 309-1: Routine Roadway Maintenance Registrations

<b>Registration</b>	<b>Document Identification</b>	<b>Document Date</b>
RR-1: Culvert replacement or repair	NHDES W-06-033A	May 2020
RR-2: Culvert extension	NHDES W-06-033B	May 2020
RR-3: Culvert relocation	NHDES W-06-033C	May 2020
RR-4: Embankment stabilization	NHDES W-06-033D	May 2020
RR-5: In-kind headwall repair only; any size culvert	NHDES W-06-033E	May 2020
RR-6: Headwall construction, repair, or replacement	NHDES W-06-033F	May 2020
RR-7: Roadside ditch maintenance	NHDES W-06-033G	May 2020
RR-8: Culvert inlet and outlet maintenance	NHDES W-06-033H	May 2020
RR-9: Temporary scaffolding	NHDES W-06-033 I	May 2020

*Amend Env-Wt 309.05(a), eff. 12-24-19 (doc. #12954), cited and to read as follows:*

Env-Wt 309.05 Processing of Routine Roadway Maintenance Registrations.

- (a) As of December 24, 2019, the department shall review a routine roadway maintenance (RRM) registration for administrative completeness within 2 working days of receipt as provided in this section.

*Readopt with amendment Env-Wt 309.06, eff. 12-15-19 (doc. #12803), as amended eff. 12-24-19 (doc. #12954), to read as follows:*

Env-Wt 309.06 Availability of Permit-by-Notification (PBN). Any person intending to undertake activities in a jurisdictional area may do so under a PBN as authorized by RSA 482-A:11, VI if the project is:

- (a) A minimum impact project that is:
  - (1) Exotic aquatic weed control activities not exceeding one acre that comply with Env-Wt 510.08(a)(3);
  - (2) Replenishment of an existing legal beach that complies with Env-Wt 511.07(a);
  - (3) Repair or replacement of an existing legal deck or patio that complies with Env-Wt 511.08;

- (4) Installation of a new seasonal dock that complies with Env-Wt 513.24(a);
  - (5) Repair or replacement of an existing legal docking structure that complies with Env-Wt 513.24(a);
  - (6) Installation of a dock anchoring pad that complies with Env-Wt 513.24(a)(1)c.;
  - (7) Installation of a watercraft lift that complies with Env-Wt 513.24(a)(1)a.;
  - (8) Installation of a new canopy that complies with Env-Wt 513.27(a);
  - (9) Repair or replacement of an existing legal wall that complies with Env-Wt 514.07(a)(3);
  - (10) Maintenance or repair of an existing legal boathouse that complies with Env-Wt 515.07(a);
  - (11) Repair or replacement of a boat launch under Env-Wt 518;
  - (12) Installation of a dry hydrant that complies with Env-Wt 518.07(a);
  - (13) Forestry activities that:
    - a. Are not eligible for an SPN; and
    - b. Comply with Env-Wt 520.05(a);
  - (14) Utility activities that:
    - a. Are not eligible for an SPN; and
    - b. Comply with Env-Wt 521.06(a);
  - (15) Installation of residential utilities to a single-family home that complies with Env-Wt 521.06(a)(7);
  - (16) Agricultural activities that comply with Env-Wt 522.06(a);
  - (17) A temporary coffer dam that complies with Env-Wt 526.06(f);
  - (18) Maintenance of an existing legal tidal docking structure that complies with Env-Wt 606.17(b);
  - (19) Repair of a existing legal tier 1 or tier 2 stream crossing that complies with Env-Wt 903.01(e)(2);
  - (20) Repair of a existing legal tier 3 stream crossing that complies with Env-Wt 903.01(e)(3);
  - (21) Replacement of an existing legal tier 1 stream crossing that complies with Env-Wt 903.01(e)(4); and
  - (22) Installation of a temporary tier 1 or tier 2 crossing that complies with Env-Wt 903.01(e)(5); and
- (b) Has no deviations from the standards and conditions specified in Env-Wt 307 or the applicable provisions of Env-Wt 500, Env-Wt 600, or Env-Wt 900.

*Amend Env-Wt 309.07 intro, (a), (b)(1), (f), (h), and (i), eff. 12-15-19 (doc. #12803), as amended eff. 12-24-19 (doc. #12954), as amended eff. 1-22-20 (doc. #12976), cited and to read as follows:*

Env-Wt 309.07 PBN Application Requirements. To obtain a PBN, the applicant shall submit to the department the following, on or with a PBN Application, NHDES W-06-27, dated May 2020:

- (a) The applicant's name, mailing address, email address, and daytime telephone number including area code;
- (b)...(1) The location of proposed project by street address, tax map and lot number, and latitude and longitude as decimal degrees to 5 decimal places (D.ddddd);
- (f) A statement signed by the town or city clerk of the municipality in which the property is located or, if the property is located in more than one municipality, by the city or town clerk of each such municipality, certifying that the municipality has received 4 copies of the application including all attachments;
- (h) A signed statement from the conservation commission or, if there is no conservation commission, the local governing body, certifying that the municipality waives its right to intervene on the project, unless the PBN is for one of the following project types in which case no review or signed statement shall be required:
  - (1) Replenishment of an existing legal beach that complies with Env-Wt 511.07(a);
  - (2) Repair or replacement of an existing legal deck or patio that complies with Env-Wt 511.08;
  - (3) Repair or replacement of an existing legal docking structure that complies with Env-Wt 513.24(a);
  - (4) Repair or replacement of an existing legal wall that complies with Env-Wt 514.07(a)(3);
  - (5) Maintenance or repair of an existing legal boathouse that complies with Env-Wt 515.07(a);
  - (6) Maintenance of an existing legal tidal docking structure that complies with Env-Wt 606.17(b);
  - (7) Repair of an existing legal tier 1 or tier 2 stream crossing that complies with Env-Wt 903.01(e)(2);
  - (8) Repair of an existing legal tier 3 stream crossing that complies with Env-Wt 903.01(e)(3); and
  - (9) Replacement of an existing legal tier 1 stream crossing that complies with Env-Wt 903.01(e)(4); and
- (i) A signed statement from the LAC, if the project is a routine roadway maintenance activity within LAC jurisdiction, certifying that the LAC waives its right to intervene on the project.

*Readopt with amendment Env-Wt 309.08, eff. 12-15-19 (doc. #12803), as amended eff. 12-24-19 (doc. #12954), to read as follows:*

Env-Wt 309.08 PBN Review Procedures.

- (a) The department shall review an application for a PBN for administrative completeness within 7 working days of receipt.
- (b) If the PBN application is not administratively complete, meaning it does not contain all information required by Env-Wt 309.07, the department shall, within 8 working days of receipt of the application, send a notice of incompleteness to the applicant and the local governing body identifying any

deficiencies and notifying the applicant that the applicant must submit all necessary information within 20 days of the date of the notice of incompleteness or the PBN application will be denied.

(c) If the applicant does not submit all necessary information within 20 days of the date of the notice, the department shall deny the PBN application.

(d) The department shall review an administratively complete application for a PBN for compliance with all applicable requirements:

(1) Within 10 days of receipt, provided the application includes a waiver of intervention from the conservation commission when required by Env-Wt 309.07(h) and from the LAC if required by Env-Wt 309.07(i), which may be provided via email; or

(2) Within 25 days of receipt, if the application does not include the certifications.

(e) Within the applicable time period specified in (d), above, the department shall:

(1) Issue a permit for the project to the applicant via email and post a copy on its website, if the application complies with applicable requirements; or

(2) Deny the application if the project covered by the application does not comply with applicable requirements and inform the applicant in writing of the reason(s) for the denial.

(f) If an application was denied pursuant to (c), above, and the applicant wishes to proceed under a PBN, the applicant shall submit a new application for an PBN as specified in Env-Wt 309.07.

(g) If an application was denied because the proposed project did not comply with applicable requirements and the applicant wishes to proceed, the applicant shall file:

(1) A new PBN application for a project that has been modified to conform to applicable requirements; or

(2) An application for an EXP under Env-Wt 310 or a standard permit under Env-Wt 311.

*Amend Env-Wt 310.01 intro, (b)(1) and (h), eff. 12-15-19 (doc. #12803), as amended eff. 12-24-19 (doc. #12954), as amended eff. 1-22-20 (doc. #12976), cited and to read as follows:*

Env-Wt 310.01 EXP Submission Requirements. To obtain an EXP, the applicant shall submit to the department the following, on or with an EXP Application, NHDES W-06-012, dated May 2020:

(b)...(1) The location of proposed project by street address, tax map and lot number, and latitude and longitude as decimal degrees to 5 decimal places (D.ddddd);

(h) A signed statement from the municipal conservation commission or, if there is no conservation commission, the local governing body, certifying that the municipality waives its right to intervene on the project, which may be submitted via email, or an indication by the applicant that they are applying for a minimum impact application under the processing timelines for a standard permit application under Env-Wt 311; and

*Amend Env-Wt 310.02 (a), (b), and (h), eff. 12-24-19 (doc. #12954), and insert new paragraphs (b) and (j) and renumber existing paragraphs accordingly, so that paragraphs (a), (b), (c), (i) and (j) are cited and read as follows:*

Env-Wt 310.02 EXP Review Procedures.

(a) The department shall review the application for an EXP for administrative completeness and compliance with applicable department rules within 30 calendar days of receipt if the application has been signed as required by Env-Wt 310.01(h) and (i).

(b) If the information submitted as part of the application is not sufficient for the department to determine that the project meets the criteria for an EXP, the department shall send a request for more information, together with any written technical comments the department deems necessary, within 30 calendar days of receipt of the application. Such request and technical comments shall be sent by electronic means if the applicant or applicant's agent has indicated that doing so is acceptable.

(c) If the application is administratively complete, complies with applicable requirements, and has the signed statements required by Env-Wt 310.01(h) and (i), the department shall issue an EXP and post the information on its website within one working day of determining that the application was complete and in compliance with all applicable requirements.

(i) If the application was administratively complete except for one or both of the signed statements required by Env-Wt 310.01(h) and (i), the application shall be processed under the application processing times established in RSA 482-A:3, XIV.

(j) Any request for additional information under (b), above, shall:

- (1) Specify that the applicant shall submit such information as soon as practicable; and
- (2) Notify the applicant that if the requested information is not received within 60 days of the request, the department shall deny the application.

*Amend Env-Wt 310.03(c), eff. 12-15-19 (doc. #12803), cited and to read as follows:*

Env-Wt 310.03 Conditions for EXPs. ...

(c) Any work shall be timed and carried out to protect documented occurrences of cold water or threatened or endangered fisheries.

*Amend Env-Wt 310.07(e), eff. 12-15-19 (doc. #12803), as amended eff. 12-24-19 (doc. #12954), cited and to read as follows:*

Env-Wt 310.07 Issuance of SMMD Permit.

(e) The department shall not issue an SMMD permit for dredging in a documented occurrence of a cold water fishery or protected species area.

*Amend Env-Wt 311.01, eff. 12-15-19 (doc. #12803), by amending (e) and (f) and inserting new paragraph (g), cited and to read as follows:*

Env-Wt 311.01 Application Preparation for All Projects. ...

(e) For work proposed within LAC jurisdiction, provide a copy of the final application and plans to the LAC prior to filing the application with the department;

(f) Ensure that impacts have been avoided and minimized to the greatest extent practicable, as specified in Env-Wt 313.03; and

(g) For any minor or major project, submit preliminary functional assessment results as specified in Env-Wt 311.10.

*Amend Env-Wt 311.02(e), eff. 12-15-19 (doc. #12803), cited and to read as follows:*

Env-Wt 311.02 Pre-Application Requirements for Projects Requiring Compensatory Mitigation. ...

(e) Bring all information collected or otherwise prepared pursuant to Env-Wt 311.01 and (a)-(c), above, as well as a narrative description of how avoidance and minimization and functional assessment have been addressed to the meeting required by (d), above; and

*Amend Env-Wt 311.03(b)(6) & (10), eff. 12-15-19 (doc. #12803), cited and to read as follows:*

Env-Wt 311.03 Applications for Standard Permits.

(b)...(6) An explanation of how the avoidance and minimization requirements of Env-Wt 313.03 have been met, as specified in Env-Wt 311.07, unless the project is limited to non-tidal shoreline structures that comply with the avoidance and minimization guidelines included in chapter 12 of the A/M BMPs, available as noted in Appendix B, specifically only for shoreline structure placement relative to vegetated wetlands and bank access locations relative to the shoreland waterfront buffer and applicable design and construction requirements of Env-Wt 500;

(10) For minor and major projects, a functional assessment of all wetlands on the project site as specified in Env-Wt 311.10, unless the project is limited to non-tidal shoreline structures that comply with the avoidance and minimization guidelines included in chapter 12 of the A/M BMPs, available as noted in Appendix B, specifically only for shoreline structure placement relative to vegetated wetlands and bank access locations relative to the shoreland waterfront buffer and applicable design and construction requirements of Env-Wt 500;

*Amend Env-Wt 311.04 intro, eff. 12-15-19 (doc. #12803), as amended eff. 12-24-19 (doc. #12954), cited and to read as follows:*

Env-Wt 311.04 Application Information. The applicant shall provide the following information on the wetlands standard permit application, NHDES W-06-012, dated May 2020:

*Amend Env-Wt 311.06(e), eff. 12-15-19 (doc. #12803), as amended 12-24-19 (doc. #12954), cited and to read as follows:*

Env-Wt 311.06 Maps and Other Attachments. ...

(e) For all projects in the protected tidal zone, a copy of the recorded deed with book and page numbers for the property;

*Readopt with amendment Env-Wt 311.07, eff. 12-15-19 (doc. #12803), as amended eff. 12-24-19 (doc. #12954), as amended eff. 1-22-20 (doc. #12976), to read as follows:*

Env-Wt 311.07 Demonstration of Avoidance and Minimization.

(a) Subject to (c), below, the applicant shall submit with the application a written narrative that explains how all impacts to functions and values of all jurisdictional areas have been avoided and minimized to the maximum extent practicable, as required by Env-Wt 313.03.

(b) The explanation required by (a), above, shall include the following:

(1) Whether the primary purpose of the proposed project is to construct a water access structure or requires access through wetlands to reach a buildable lot or portion thereof;

(2) Except as provided in any project-specific criteria and except for any NHDOT project that qualifies for a categorical exclusion under the National Environmental Policy Act (NEPA) or that would qualify for a categorical exclusion if NEPA applied, for any project that proposes new permanent impacts of more than one acre or that proposes new permanent impacts to a PRA, or both, whether any other properties reasonably available to the applicant, whether already owned or controlled by the applicant or not, could be used to achieve the project's purpose without altering the functions and values of any jurisdictional area, in particular wetlands, streams, and PRAs;



(3) Whether alternative designs or techniques, such as different layouts, different construction sequencing, or alternative technologies could be used to avoid impacts to jurisdictional areas or their functions and values as described in the A/M BMPs, available as noted in Appendix B; and

(4) Except for projects solely limited to construction or modification of non-tidal shoreline structures, which shall be subject to criteria in Env-Wt 313.03(c), how the project conforms to Env-Wt 311.10(c).

(c) In lieu of a written narrative, the applicant may submit a completed “Avoidance and Minimization Checklist” dated May 2020, NHDES W-06-050.

*Amend Env-Wt 311.12, eff. 12-15-19 (doc. #12803), by inserting new paragraphs (d) and (e), cited and to read as follows:*

Env-Wt 311.12 After-the-Fact Applications.

(d) Subject to (e), below, the department shall process an after-the-fact application in accordance with Env-Wt 312 within 50 days of receiving an administratively complete after-the-fact application, including necessary attachments, for a project having less than one acre of impact and within 75 days for larger projects.

(e) The time limits in (d), above, shall not apply if:

(1) The project is the subject of an ongoing enforcement investigation, enforcement action, or department of justice case, in which case the timeframe of the ongoing action shall take precedence; or

(2) The application requires additional information or requires the department to perform a field inspection of the project, in which case the department shall make its decision on the application within 60 days of the receipt of the additional information or completion of the field inspection, as applicable.

*Readopt with amendment Env-Wt 311.13, eff. 12-15-19 (doc. #12803), to read as follows:*

Env-Wt 311.13 Amendments to Applications.

(a) Subject to (b), below, an applicant may revise a proposed project by submitting, on or with an Amendment Request Form For Wetlands Application or Permit, NHDES W-06-081, dated May 2020, the information required by Env-Wt 311.03 to amend the application for the project prior to the department’s issuance of a final decision on the application. The applicant shall provide notice to each person to whom notice of the original application was sent prior to filing the amended application with the department.

(b) If the proposed change constitutes a “significant amendment” as provided in RSA 482-A:3, XIV(e), reprinted in Appendix C, the applicant shall file a new application, not an amendment to an existing application.

(c) The department shall process the request in accordance with Env-Wt 312 within 30 days of receiving an administratively complete Amendment Request Form For Wetlands Application or Permit, including required attachments, unless:

(1) The request includes a new mitigation proposal, in which case the processing time shall be 50 days; or

(2) The request is for a project that proposes an acre or more of impact, in which case the processing time shall be 75 days.

*Readopt with amendment Env-Wt 312.01, eff. 12-15-19 (doc. #12803), to read as follows:*

Env-Wt 312.01 Identification of Applications; Retention of Files.

- (a) Upon receipt of an application, the department shall assign a file number.
- (b) The department shall maintain a file on each application.
- (c) The department shall retain files as specified in Env-Wt 105.01.

*Amend Env-Wt 312.04 intro, eff. 12-15-19 (doc. #12803), cited and to read as follows:*

Env-Wt 312.04 Complete Mitigation Proposal Components. The applicant shall provide the following information in order for a compensatory mitigation proposal to be deemed an administratively complete mitigation proposal:

*Readopt with amendment Env-Wt 312.05, eff. 12-15-19 (doc. #12803), to read as follows:*

Env-Wt 312.05 Technical Review; Time Extensions.

- (a) Once an application has been determined to be administratively complete, the department shall proceed with its technical review of the application as specified in RSA 482-A:3, XIV(a)(2)-(5), reprinted in Appendix C.
- (b) If the information submitted as part of the application is not sufficient for the department to determine that the criteria for issuing a permit specified in Env-Wt 313.01 are met, the department shall send a request for more information (RMI) to the applicant as authorized by RSA 482-A:3, XIV(a)(2).
- (c) As stated in RSA 482-A:3, XIV(a)(2), “[a]ny request for additional information under this subparagraph shall specify that the applicant submit such information as soon as practicable and shall notify the applicant that if the requested information is not received within 60 days of the request, the department shall deny the application.”
- (d) As provided in RSA 482-A:3, XIV(a)(2), an applicant may request additional time to respond to an RMI. An applicant shall submit a request for additional time to the department in writing by identifying the application by file number, explaining why additional time is needed and what information will be provided if the additional time is granted, and the date by which the information will be provided.
- (e) The department shall grant additional time to respond to a RMI unless the applicant has already requested and received additional time totaling one year or more.
- (f) If the department is unable to review an application within the time limits specified in RSA 482-A:3, XIV(a)(3) or (4), as applicable, the department shall ask the applicant to agree to an extension of time. If the applicant agrees to extend the time, the applicant and the department shall sign an extension agreement that identifies the deadline for department action.

*Adopt Env-Wt 312.06 to read as follows:*

Env-Wt 312.06 Permits by Default.

- (a) As stated in RSA 482-A:3, XIV(b)(1), “[i]f the department fails to act within the applicable time frame established in subparagraphs (a)(3), (a)(4), and (a)(5), the applicant may ask the department to issue the permit by submitting a written request. If the applicant has previously agreed to accept communications from the department by electronic means, a request submitted electronically by the applicant shall constitute a written request.”
- (b) As provided in RSA 482-A:3, XIV(b)(2), within 14 days of the date of receipt of a written request from the applicant to issue the permit, the department shall:

- (1) Approve the application, in whole or in part, and issue a permit; or
- (2) Deny the application and issue written findings in support of the denial.

(c) As provided in RSA 482-A:3, XIV(b)(3), if the department does not issue either a permit or a written denial within the 14-day period, the applicant shall be deemed to have a permit by default and may proceed with the project as presented in the application.

(d) As provided in RSA 482-A:3, XIV(b)(3), a permit by default shall not relieve the applicant of complying with all requirements applicable to the project, including but not limited to requirements established in or under RSA 482-A, RSA 485-A relating to water quality, and federal requirements.

(e) As provided in RSA 482-A:3, XIV(b)(4), upon receipt of a written request from an applicant, the department shall issue written confirmation that the applicant has a permit by default pursuant to RSA 482-A:3, XIV(b)(3), which authorizes the applicant to proceed with the project as presented in the application and requires the work to comply with all requirements applicable to the project, including but not limited to requirements established in or under RSA 482-A and RSA 485-A relating to water quality, and federal requirements.

*Amend Env-Wt 313.03(b) intro, eff. 12-15-19 (doc. #12803), as amended 12-24-19 (doc. #12954), cited and to read as follows:*

Env-Wt 313.03 Avoidance and Minimization.

(b) For any major or minor project, exclusive of non-tidal shoreline structures that are subject to (c), below, the applicant shall demonstrate specifically that:

*Amend Env-Wt 313.03, eff. 12-15-19 (doc. #12803), as amended 12-24-19 (doc. #12954), by inserting paragraph (c) to read as follows:*

(c) For any major or minor project involving the construction or modification of non-tidal shoreline structures over areas of surface waters having an absence of wetland vegetation, the applicant shall demonstrate specifically that:

- (1) The structures have been designed to use the minimum construction surface area over surface waters necessary to meet the stated purpose of the structures;
- (2) The type of construction proposed is the least intrusive upon the public trust that will ensure safe navigation and docking on the frontage;
- (3) The structures have been designed to avoid and minimize impacts on ability of abutting owners to use and enjoy their properties;
- (4) The structures have been designed to avoid and minimize impacts to the public's right to navigation, passage, and use of the resource for commerce and recreation;
- (5) The structures have been designed, located, and configured to avoid impacts to water quality, aquatic vegetation, and wildlife and finfish habitat; and
- (6) The structures have been designed to avoid and minimize the removal of vegetation, the number of access points through wetlands or over the bank, and activities that may have an adverse effect on shoreline stability.

*Amend Env-Wt 313.04(a)(3), eff. 12-15-19 (doc. #12803), cited and to read as follows:*

Env-Wt 313.04 Mitigation Requirements.

(a)...(3) The overall project:

- a. Is limited to bank stabilization using rip-rap, bio-engineering methods, or other bank stabilization techniques to protect existing infrastructure such as highways, bridges, dams, or buildings, or includes such work in combination with other qualifying criteria;
- b. Is limited to the installation of an accessory docking structure or the construction of a new or replacement shoreline structure or breakwater, or includes such work in combination with other qualifying criteria, provided the resulting dock surface area of new shoreline structures on the frontage is less than 2,000 SF;
- c. Involves the construction of a pond classified as a minimum impact or minor project in Env-Wt 519, either alone or in combination with other qualifying criteria; or
- d. Is otherwise a minimum impact project or is a self-mitigating project as defined in Env-Wt 902.

*Amend Env-Wt 406.03(a), eff. 12-15-19 (doc. #12804), as amended eff. 6-2-20 (doc. #13046), cited and to read as follows:*

Env-Wt 406.03 Wetlands Delineation Not Required for Certain Projects.

- (a) Delineation of wetlands, including vernal pools, shall not be required for the following projects:
  - (1) Any project that qualifies for a statutory permit-by-notification (SPN);
  - (2) Minimum impact exotic aquatic weed control or minimum impact native aquatic vegetation removal projects as provided in Env-Wt 510;
  - (3) Agriculture projects impacting less than 3 acres of wet meadow, provided the application and plan are prepared by the NRCS or a certified wetland scientist; and
  - (4) Shoreline structure projects at the shoreline of and extending over open water where there are no vegetated wetlands unless the exemption in (2), above, applies.

*Amend Env-Wt 407.02(c), eff. 12-15-19 (doc. #12804), cited and to read as follows:*

Env-Wt 407.02 Impact Classification Adjustments.

(c) A project that is classified as a major project based solely on the documented occurrence of protected species or habitat and would otherwise qualify for an LSA, PBN, EXP, or as a minimum impact project shall be processed as an LSA, PBN, EXP, or standard minimum or minor impact project, as applicable based on the other qualifying criteria, only if the applicant provides written documentation committing to implementation of recommendations from NHB or NHF&G, or both, as applicable, regarding the protected species or habitat.

*Amend Env-Wt 407.03(b)(3), eff. 12-15-19 (doc. #12804), cited and to read as follows:*

Env-Wt 407.03 Jurisdictional Area Size Thresholds; Measuring Watercourse Length.

- (b)...(3) Qualifies for project-specific criteria as identified in Env-Wt 407.04, Table 407-2.

*Amend Env-Wt 510.02 (e)(1), eff. 12-15-19 (doc. #12805), cited and to read as follows:*

Env-Wt 510.02 Approval Criteria for EAW Control Projects. ...

- (e)...(1) A PRA, except as provided in Env-Wt 407; or

*Amend Env-Wt 510.04(b), eff. 12-15-19 (doc. #12805), cited and to read as follows:*

Env-Wt 510.04 Approval Criteria for NAV Removal Projects. ...

- (b) The project will not:
  - (1) Remove a protected species or habitat;
  - (2) Remove or disturb root systems or substrate materials or grades that would constitute dredging;
  - (3) Be located in:
    - a. A PRA, except as provided in Env-Wt 407; or
    - b. A diverse habitat that provides nesting or foraging habitat for fish or wildlife that would be negatively impacted by the removal of vegetation; or
  - (4) Cause removal of NAV that is part of a floating island.

*Amend Env-Wt 510.05(a)(4) intro, eff. 12-15-19 (doc. #12805), cited and to read as follows:*

Env-Wt 510.05 Application Requirements for NAV Removal and EAW Control Projects.

- (a)...(4) A description of the proposed control methods and the justification for the method selected, including: ...

*Amend Env-Wt 511.02(b)(2), eff. 12-15-19 (doc. #12805), cited and to read as follows:*

Env-Wt 511.02 Approval Criteria for Water Access Structures. ...

- (b)...(2) Any new water access structure, exclusive of stairs, will not impact a wetland, watercourse, or bank of a watercourse; and

*Amend Env-Wt 511.04(c), (f)(2), (j), and (l), eff. 12-15-19 (doc. #12805), as amended eff. 12-24-19 (doc. #12954), cited and to read as follows:*

Env-Wt 511.04 Water Access Structure Design Requirements. ...

- (c) Where hardened shorelines do not exist, water access surfaces shall be located at an elevation at least 12 inches landward of the normal high water line;
- (f)...(2) Be constructed or installed such that all portions of the steps are landward of the normal high water line;
- (j) No work shall be conducted in a wetland or PRA, except as provided in Env-Wt 407;
- (l) Appropriate devices for diversion of stormwater away from beaches shall be installed immediately upslope of the beach.

*Amend Env-Wt 511.06(a), eff. 12-15-19 (doc. #12805), cited and to read as follows:*

Env-Wt 511.06 Water Access Structure Construction Project Classifications.

- (a) Construction of a water access structure shall be a minimum impact project only if all of the following criteria are met:
  - (1) No construction surface area, filling, or dredging occurs below the normal high water line or ordinary high water mark, as applicable;
  - (2) No work is done in a wetland or PRA, except as provided in Env-Wt 407;

- (3) The combination of existing and proposed water access structures does not use more than 20 percent of the applicant's contiguous shoreline up to a maximum of 50 feet;
- (4) A maximum of 10 CY of sand is used; and
- (5) The total area impacted by water access structures does not exceed 250 SF.

*Readopt with amendment Env-Wt 511.07, eff. 12-15-19 (doc. #12805), to read as follows:*

**Env-Wt 511.07 Beach Replenishment Project Classifications.**

(a) Replenishment of sand on an existing beach shall be a minimum impact project only if all of the following criteria are met:

- (1) The beach is an existing legal structure as defined in Env-Wt 102;
- (2) No sand is placed below the normal high water line or ordinary high water mark, as applicable;
- (3) No work is done in a wetland or PRA, except as provided in Env-Wt 407;
- (4) No more than 10 CY of sand is used; and
- (5) The beach is not replenished more frequently than once in any 6-year period.

(b) Replenishment of a beach shall be a minor impact project if the project meets the criteria in (a)(1)-(3), above, and either:

- (1) The beach is replenished more frequently than once in a 6-year period; or
- (2) More than 10 CY of sand but not more than 20 CY of sand will be used.

(c) Replenishment of an existing legal beach shall be a major impact project if the project does not meet the criteria for a minimum impact project specified in (a), above, or for a minor impact project specified in (b), above, provided no sand shall be placed below the normal high water line or ordinary high water mark, as applicable.

(d) A beach that is not an existing legal structure shall not be replenished unless an after-the-fact permit is obtained for construction of the beach, which shall be classified as provided in Env-Wt 511.06.

*Readopt with amendment Env-Wt 511.08, eff. 12-15-19 (doc. #12805), as amended eff. 12-24-19 (doc. #12954), to read as follows:*

**Env-Wt 511.08 Deck or Patio Repair Project Classifications.**

(a) Repair of an existing deck or patio shall be a minimum impact project only if all of the following criteria are met:

- (1) The deck or patio is an existing legal structure; and
- (2) No work is done in a wetland or PRA, except as provided in Env-Wt 407.

(b) Repair of an existing deck or patio shall be a minor impact project if the criteria of (a), above, are not met.

(c) A deck or patio that is not an existing legal structure shall not be repaired unless an after-the-fact permit is obtained for the construction of the structure, which shall be classified as provided in Env-Wt 511.06.

*Amend Env-Wt 513.02(a), eff. 12-15-19 (doc. #12805), cited and to read as follows:*

Env-Wt 513.02 Applicability.

(a) Subject to (b), below, this part shall apply to the construction, modification, repair, or replacement of a docking structure or an accessory docking structure.

*Amend Env-Wt 513.03(a) intro, eff. 12-15-19 (doc. #12805), cited and to read as follows:*

Env-Wt 513.03 Approval Criteria for Docking Structures.

(a) In addition to meeting the applicable approval criteria in Env-Wt 300, the department shall not approve an application for the construction or modification of a docking structure unless the applicant demonstrates that the following criteria are met:

*Amend Env-Wt 513.04 (a) and (b), eff. 12-15-19 (doc. #12805), as amended eff. 12-24-19 (doc. #12954), cited and to read as follows:*

Env-Wt 513.04 Approval Criteria for Permanent Docking Structures.

(a) In addition to meeting the conditions established in Env-Wt 300, the department shall not approve an application for construction of a permanent docking structure unless the applicant establishes that:

(1) The proposed permanent structure will be located on a surface water body of over 1,000 acres; and

(2) The proposed site for the structure is exposed to a design fetch of at least 1 mile between compass headings 245 to 340 degrees, or a design fetch of at least 2 miles between compass headings 341 to 0 or 0 to 244 degrees, as measured from true north.

(b) When the applicant does not meet the requirements of (a)(2), above, the department shall approve the permanent dock provided the applicant documents the occurrence of waves of at least one foot in height measured from trough to crest in water at least 3 feet deep, at the location of the proposed dock on at least 4 separate occasions, lasting 4 hours each, between the dates of May 15 and October 15.

*Readopt with amendment Env-Wt 513.05, eff. 12-15-19 (doc. #12805), to read as follows:*

Env-Wt 513.05 Approval Criteria for Accessory Docking Structures. The department shall approve an application for the construction, installation, or modification of an accessory docking structure, whether an anchoring pad for a seasonal dock, canopy, dolphin, ice cluster, tie-off piling, wave attenuator, or watercraft lift, only if the proposed accessory docking structure is designed and installed so as to comply with:

(a) The applicable conditions established in Env-Wt 300;

(b) Env-Wt 513.10 relative to setbacks;

(c) Env-Wt 513.11 relative to dimensions;

(d) Env-Wt 513.12 or Env-Wt 513.17, as applicable, relative to frontage;

(e) Env-Wt 513.14 relative to navigation space; and

(f) The applicable provisions of this part relative to design and construction standards for specific types of accessory docking structures.

*Amend Env-Wt 513.06 intro and (a)(5), eff. 12-15-19 (doc. #12805), cited and to read as follows:*

Env-Wt 513.06 Application Requirements for All Docking Structures. The project-specific information required by Env-Wt 310.01(c)(1) or Env-Wt 311.03(b)(11), as applicable, for all docking structure applications and accessory docking structure applications shall be as follows:

- (a)...(5) The footprint of all existing and proposed structures within jurisdiction along the property frontage;

*Amend Env-Wt 513.07(d), eff. 12-15-19 (doc. #12805), cited and to read as follows:*

Env-Wt 513.07 Municipal Review of Public or Commercial Docking Structures or Marinas.

(d) Local regulations shall not restrict the sole and exclusive authority of the state to authorize construction over, or dredge and fill in, great ponds or public-owned water bodies. If a municipality denies the local application or does not act on the application in a timely manner, the applicant may request a waiver of the requirement of (a), above, in accordance with Env-Wt 204.

*Amend Env-Wt 513.08 intro and (b), eff. 12-15-19 (doc. #12805), cited and to read as follows:*

Env-Wt 513.08 Information Required for Requests for Waivers to Size Requirements. If an applicant wants a docking structure having dimensions greater than those specified in Env-Wt 513.11(a), the applicant shall provide information demonstrating that one or more of the following is true:

(b) The property has a unique physical characteristic that requires a greater length that is not shared generally by nearby properties, such as insufficient water depth;

*Amend Env-Wt 513.11(a) intro, eff. 12-15-19 (doc. #12805), cited and to read as follows:*

Env-Wt 513.11 Dimensions of Docking Structures.

(a) Subject to (b), below, approvable standard dimensions for a dock shall not exceed the following dimensions:

*Readopt with amendment 513.12, eff. 12-15-19 (doc. #12805), to read as follows:*

Env-Wt 513.12 Frontage Requirements for Private and Non-commercial Docking Structures.

(a) Except as provided in Env-Wt 513.11(b), a property shall have a minimum of 75 feet of shoreline frontage to construct a private and non-commercial docking structure with not more than 2 boat slips.

(b) An additional 75 feet of shoreline frontage on the property shall be required for each additional boat slip or securing location on a docking structure for private and non-commercial use.

*Amend Env-Wt 513.15(a), (d)(1), and (g)(3), eff. 12-15-19 (doc. #12805), cited and to read as follows:*

Env-Wt 513.15 Design Requirements for Permanent Docking Structures.

(a) In addition to meeting the applicable design requirements of Env-Wt 300, all permanent docking structures and all accessory docking structures shall be designed to meet the requirements in this part relative to setbacks, navigation space, dimensions, and frontage, and the requirements of this section.

(d)...(1) Pilings cannot be driven due to site conditions; and

(g)...(3) The minimum clear spacing between cribs shall be not less than 12 feet; and



*Readopt with amendment Env-Wt 513.20 and Env-Wt 513.21, eff. 12-15-19 (doc. #12805), to read as follows:*

Env-Wt 513.20 Design and Construction Requirements for Dolphins, Ice Clusters, and Tie-Off Piles. In addition to meeting the applicable design and construction requirements of Env-Wt 300, a dolphin, ice cluster, or tie-off pile shall be designed and constructed so that the structure does not, by its presence alone or in combination with similar proposed structures:

- (a) Add boat slips to an existing docking structure; or
- (b) Present a hazard to navigation.

Env-Wt 513.21 Design and Construction Requirements for Watercraft Lifts. In addition to meeting the applicable design and construction requirements of Env-Wt 300, a watercraft lift shall be designed and constructed in accordance with the following:

- (a) Subject to (c), below, the lift shall be installed:
  - (1) In an existing legal boat slip; or
  - (2) If a personal watercraft lift, immediately adjacent to an existing legal docking structure.
- (b) Any seasonal lift shall be installed, maintained, and removed in accordance with Env-Wt 513.22(b); and
- (c) If a lift is the only structure on the frontage, it shall:
  - (1) Be installed along the shoreline of the subject property; and
  - (2) Meet all requirements for a seasonal docking structure specified in Env-Wt 513.22(b).

*Readopt with amendment Env-Wt 513.24, eff. 1-22-20 (doc. #12976), to read as follows:*

Env-Wt 513.24 Docking Structure Construction, Repair, or Replacement Project Classifications.

- (a) The construction, repair, or replacement of a docking structure, including accessory structures, shall be a minimum impact project only if:
  - (1) The project meets all of the following criteria:
    - a. The proposed docking structure, including accessory structures, is a seasonal dock meeting all applicable criteria specified in Env-Wt 513.03, Env-Wt 513.10 through Env-Wt 513.12, Env-Wt 513.14, and Env-Wt 513.22;
    - b. No more than 2 slips, including previously existing slips, are proposed;
    - c. Any anchoring pad is designed and installed as specified in Env-Wt 513.13; and
    - d. Any watercraft lift is designed and installed as specified in Env-Wt 513.05(a) and Env-Wt 513.21; or
  - (2) The project is for the repair or replacement of legally existing structures, where the replacement meets the definition in Env-Wt 104.
- (b) The construction, repair, or replacement of a docking structure, including accessory structures, shall be a minor project if the project does not meet the criteria specified in (a), above, for minimum impact projects and:
  - (1) No more than 4 boat slips, including previously existing boat slips, are proposed; and

- (2) The proposed docking structure, including accessory structures, will use no more than 100 feet of waterfront.
- (c) The construction of a new docking structure, including accessory structures, shall be a major project if:
  - (1) The project does not meet the criteria for minimum impact projects specified in (a), above, or for minor projects specified in (b), above;
  - (2) The docking structure, including accessory structures, is a major docking system; or
  - (3) The docking structure, including accessory structures, is proposed to be adjacent to or attached to a breakwater.

*Readopt with amendment Env-Wt 513.25 through Env-Wt 513.27, eff. 12-15-19 (doc. #12805), to read as follows:*

Env-Wt 513.25 Docking Structure Modification Project Classifications.

- (a) The modification of a docking structure, including any accessory structures, shall be a minimum impact project only if all of the following criteria are met:
  - (1) The docking structure, including any accessory structures, is a seasonal dock meeting all applicable criteria specified in Env-Wt 513.10 through Env-Wt 513.12, Env-Wt 513.14, and Env-Wt 513.22, with no waivers;
  - (2) The docking structure, including any accessory structures, is an existing legal structure; and
  - (3) The project will result in no more than 2 slips, including previously existing slips.
- (b) The modification of a docking structure, including any accessory structures, shall be a minor project if the project does not meet the criteria specified in (a), above, for minimum impact projects and:
  - (1) The docking structure, including any accessory structures, is an existing legal structure;
  - (2) The project is limited to the installation of one or more pilings that do not by their presence alone result in additional slips on the frontage;
  - (3) The project will result in no more than 4 boat slips, including previously existing boat slips; and
  - (4) The docking structure, including any accessory structures, uses no more than 100 feet of waterfront.
- (c) The modification of an existing legal docking structure shall be a major project if:
  - (1) The project does not meet the criteria for minimum impact projects specified in (a), above, or for minor projects specified in (b), above;
  - (2) The docking structure, including any accessory structures, is a major docking system; or
  - (3) The docking structure, including any accessory structures, is or is proposed to be adjacent to or attached to a breakwater.

Env-Wt 513.26 Accessory Docking Structure Construction or Modification Project Classifications.

- (a) The installation or construction of a new accessory docking structure or the modification, repair, or replacement of an existing accessory docking structure shall be a minimum impact project if:

- (1) The project involves the installation of a seasonal watercraft lift within an existing legal boat slip; and
- (2) The project meets the requirements of Env-Wt 513.24(a).

(b) The installation of a new accessory docking structure or the modification of an existing accessory docking structure shall be a minor project if the project meets Env-Wt 513.24(b).

(c) If construction or modification of the associated docking structure is a major project, the installation of a new accessory docking structure or the modification of an existing accessory docking structure shall be part of the major project.

Env-Wt 513.27 Canopy Project Classification.

(a) The installation of a new canopy shall be a minimum impact project if:

- (1) For surface waters 1,000 acres or larger, the canopy measures a maximum of 14 feet by 30 feet and is the only canopy on the frontage; or
- (2) For surface waters 1,000 acres or smaller, the canopy measures a maximum of 12 feet by 25 feet and is the only canopy on the frontage.

(b) Any canopy project that exceeds the criteria in (a), above, shall be classified based on the docking structure with which it is associated or to which it is attached.

*Amend Env-Wt 514.02(a) and (c)(3), eff. 12-15-19 (doc. #12805), cited and to read as follows:*

Env-Wt 514.02 Approval Criteria for All Bank/Shoreline Stabilization Projects.

(a) In addition to meeting the applicable conditions established in Env-Wt 300, the department shall not approve a hard-scape stabilization proposal such as rip-rap or a retaining wall unless the applicant demonstrates that the bank or shoreline in that location cannot be stabilized by preserving or restoring natural vegetation, landscaping, or bioengineering.

(c)...(3) Semi-natural form design shall be allowed only where the applicant demonstrates that anticipated turbulence, flows, restricted space, or similar factors, render vegetative or soft stabilization methods, bioengineering, and natural process design stabilization methods physically impractical;

*Amend Env-Wt 514.03(d) intro & (1), eff. 12-15-19 (doc. #12805), cited and to read as follows:*

Env-Wt 514.03 Application Requirements for All Bank/Shoreline Stabilization Projects. ...

(d) Design plans for a wall shall include:

- (1) Cross-section and plan views of the proposed installation and sufficient plans to clearly indicate:
  - a. The relationship of the project to fixed points of reference, abutting properties, and features of the natural shoreline; and
  - b. The dimensions of the existing wall, if any, and of the proposed wall; and

*Amend Env-Wt 514.07(a)(3) intro, (b)(1), and (c)(2), eff. 12-15-19 (doc. #12805), cited and to read as follows:*

Env-Wt 514.07 Bank Stabilization Construction Project Classification.

(a)...(3) Repair or replacement in-kind of an existing legal retaining wall that:

(b)...(1) Any project less than 50 LF that does not meet the minimum impact criteria;

(c)...(2) Any other project that does not meet the minor bank stabilization criteria.

*Readopt with amendment Env-Wt 515.02, eff. 12-15-19 (doc. #12805), to read as follows:*

Env-Wt 515.02 Definitions.

(a) “Dug-in basin” means an area of privately-owned land excavated to allow inundation by adjacent public waters to access a single public water at a single location along that water’s shoreline.

(b) “Existing dug-in basin” means a dug-in basin that was legally constructed prior to December 15, 2019 or for which a permit was issued prior to December 15, 2019.

(c) “New dug-in basin” means a dug-in basin for which a permit was not issued as of December 15, 2019.

*Amend Env-Wt 515.03(d)(4), eff. 12-15-19 (doc. #12805), cited and to read as follows:*

Env-Wt 515.03 Approval Criteria for Dug-In Basins and Boathouses. ...

(d)...(4) Not impact wetlands, watercourses, or other jurisdictional areas exclusive of banks;

*Amend Env-Wt 515.05(d), eff. 12-15-19 (doc. #12805), cited and to read as follows:*

Env-Wt 515.05 Construction and Maintenance Requirements for Dug-In Basins and Boathouses.

(d) All disturbed areas shall be revegetated with native non-invasive species in accordance with Env-Wq 1412.05 relative to a planting matrix for restoring the waterfront buffer.

*Amend Env-Wt 515.06(c)(1), eff. 12-15-19 (doc. #12805), cited and to read as follows:*

Env-Wt 515.06 Dug-In Basins and Boathouse Construction or Modification Project Classification.

(c)...(1) Additional boat slips will be provided as a result of the project but the total number of existing and proposed slips on the property will not exceed 4; or

*Amend Env-Wt 516.03(e), eff. 12-15-19 (doc. #12805), cited and to read as follows:*

Env-Wt 516.03 Application Requirements for Intake and Outflow Structures. ...

(e) Maintenance and repair schedule with appropriate time of year restrictions to protect fisheries and protected species and habitat;

*Readopt with amendment Env-Wt 517.01, eff. 12-15-19 (doc. #12805), to read as follows:*

Env-Wt 517.01 Applicability. This part shall apply to the construction and maintenance of trails, boardwalks, and paths in jurisdictional areas used to provide access for outdoor recreational pursuits including but not limited to snowmobiling as defined in RSA 215-C:1, XV and off-highway recreational vehicle use as defined in RSA 215-A:1, VI.

*Amend Env-Wt 517.05(g), eff. 12-15-19 (doc. #12805), cited and to read as follows:*

Env-Wt 517.05 Design and Construction Requirements for Boardwalks. ...

(g) A boardwalk shall not be supported by horizontal support timbers, otherwise known as sleepers, on or in the soil, provided that on hiking trails, a log foot bridge may have timber sleepers on the soils; and

*Amend Env-Wt 517.06 (c)(1), (d) intro, and (f), eff. 12-15-19 (doc. #12805), cited and to read as follows:*

Env-Wt 517.06 Classification of Trail and Pathway Projects. ...

(c)...(1) The project proposes any crossing of a cedar swamp or PRA, except as provided in Env-Wt 407;

(d) A project to maintain, repair, or replace an existing legal trail or pathway shall be a minimum impact project only if:

(f) A project to maintain, repair, or replace an existing legal trail or pathway shall be a major impact project if the project would require a waiver of any approval, design, or construction criteria, unless the only waiver needed is for prime wetlands or a duly-established 100-foot buffer and the waiver is obtained pursuant to Env-Wt 706.

*Amend Env-Wt 517.07(a), eff. 12-15-19 (doc. #12805), cited and to read as follows:*

Env-Wt 517.07 Classification of Boardwalk Construction Projects.

(a) A boardwalk construction project shall be classified as minimum impact if the project:

(1) Will have a total area of not more than 3,000 SF, provided that log foot bridges on trails may have up to 3,000 SF per crossing;

(2) Disturbs not more than 50 LF of a surface water body, measured along the shoreline of a lake or pond at its bank; and

(3) Will have no adverse impacts to a marsh, scrub-shrub wetland adjacent to a surface waterbody, floodplain wetland adjacent to a water course, cedar swamps, or PRAs, except as provided in Env-Wt 407.

*Amend Env-Wt 517.08(a), eff. 12-15-19 (doc. #12805), cited and to read as follows:*

Env-Wt 517.08 Maintenance and Repair of Boardwalks.

(a) Out-of-water components of an existing legal boardwalk may be repaired or replaced without a permit pursuant to the statutory exemption established in RSA 482-A:3, IV(a).

*Readopt with amendment Env-Wt 518.02, eff. 12-15-19 (doc. #12805), to read as follows:*

Env-Wt 518.02 Approval Criteria for Dikes in Non-Tidal Waters. Any dike proposed in non-tidal waters shall comply with Env-Wt 526 relative to dams.

*Readopt with amendment Env-Wt 518.07, eff. 12-15-19 (doc. #12805), as amended eff. 12-24-19 (doc. #12954), to read as follows:*

Env-Wt 518.07 Classification of Non-Docking Structure Projects.

(a) Dry hydrant projects within the bed and banks of surface waters shall be processed as:

(1) A minimum impact project where excavation is less than 3,000 SF total area;

(2) A minor project for projects where excavation impacts 3,000 SF or more but less than 10,000 SF total area; and

(3) A major project for projects where excavation impacts 10,000 SF or greater total area or located in a PRA.

(b) All other non-docking structures shall be classified in accordance with Env-Wt 407.

*Amend Env-Wt 519.05(c)(1), eff. 12-15-19 (doc. #12805), cited and to read as follows:*

Env-Wt 519.05 Design Requirements for Ponds. ...

- (c)...(1) How the design meets the criteria for minimum impact agriculture projects in Env-Wt 522.06(a); and

*Amend Env-Wt 519.08(a)(5) and (c)(4), eff. 12-15-19 (doc. #12805), cited and to read as follows:*

Env-Wt 519.08 Classification of Pond Construction Projects. ...

- (a)...(5) The project is not located in and will not impact a PRA, except as provided in Env-Wt 407;  
(c)...(4) The project will not impact a PRA, except as provided in Env-Wt 407; and

*Readopt with amendment Env-Wt 519.09, eff. 12-15-19 (doc. #12805), to read as follows:*

Env-Wt 519.09 Classification of Pond Maintenance and Repair Projects.

(a) Unless exempt pursuant to RSA 482-A:3, IV, a constructed pond shall become a jurisdictional wetland and may be maintained as a minimum impact project if the following conditions are met:

- (1) The pond is an existing legal pond;
- (2) The pond is an active man-made pond;
- (3) The entire pond is not located in a PRA, except as provided in Env-Wt 407;
- (4) The pond does not exceed 20,000 SF;
- (5) The project is within the original footprint of the existing pond; and
- (6) Dredged material will be placed outside of wetlands jurisdiction.

(b) If the project meets (a)(1), above, but does not meet (a)(2)-(4), above, the project shall be classified in accordance with Env-Wt 407.

(c) A pond that is not an existing legal pond shall not be maintained unless an after-the-fact permit is obtained for the construction of the pond, which shall be classified as provided in Env-Wt 519.08.

*Amend Env-Wt 521.03 intro and (d), eff. 12-15-19 (doc. #12805), cited and to read as follows:*

Env-Wt 521.03 Approval Criteria for Utility Permits. In addition to meeting the criteria established in Env-Wt 300, the department shall not approve a permit for a utility project unless the following criteria are met:

(d) For major projects, if the project involves greater than one acre of contiguous permanent wetland or watercourse impact, an off-site alternatives analysis is done.

*Amend Env-Wt 521.04(a)(2) and (b), eff. 12-15-19 (doc. #12805), cited and to read as follows:*

Env-Wt 521.04 Utility Project Application Requirements. ...

- (a)...(2) A wetland delineation, functional assessment, and impact analysis in accordance with Env-Wt 300;  
(b) A recent aerial photograph of the project area overlain by the items specified in (a)(1), above;

*Amend Env-Wt 521.06(a)(4), (b), and (c), eff. 12-15-19 (doc. #12805), cited and to read as follows:*

Env-Wt 521.06 Utility Project Classification.

- (a)...(4) Impacts to any PRA other than prime wetlands and duly-established 100-foot buffers are authorized by following the recommendations provided by NHB, NHF&G, and the department;
- (b) A utility project shall be a minor impact project if the project:
  - (1) Includes the installation of one or more new permanent crossing(s) of a perennial stream;
  - (2) Establishes a new access road, new utility corridor or right-of-way, or new utility assets;
  - (3) Exceeds the Utility BMPs, available as noted in Appendix B, or any of the minimum impact criteria in (a), above;
  - (4) Includes permanent conversion of forested wetlands to emergent or scrub-shrub wetlands with or without temporary fill;
  - (5) For private residential utility projects, exceeds minimum impact criteria but does not exceed Env-Wt 400 project classification criteria; or
  - (6) Impacts greater than 3,000 SF but less than 10,000 SF or meets the requirements for minor impact classification specified in Env-Wt 407.
- (c) A utility project shall be a major impact project if:
  - (1) It does not meet the criteria for a minimum or minor impact project;
  - (2) It exceeds the minor impact criteria or meets the major impact criteria specified in Env-Wt 407; or
  - (3) It meets the criteria in (a) above, but:
    - a. Is located in a PRA and has impacts that cannot be addressed through recommendations by NHB, NHF&G, or the department, as applicable; or
    - b. Requires mitigation under state or federal law.

*Amend Env-Wt 522.06(a)(4) & (7) and (b), eff. 12-15-19 (doc. #12805), cited and to read as follows:*

Env-Wt 522.06 Classification of Agricultural Construction Projects.

- (a)...(4) The project is not in or adjacent to a PRA, except as provided in Env-Wt 407;
  - (7) The project does not impact more than 3,000 SF of wetlands, which may include impacts to streams that qualify to be processed as a minimum impact project, directly adjacent to the improvement which are for access only.
- (b) An agricultural project shall be a minor impact project only if:
  - (1) The project includes road impacts greater than 3,000 SF, which may include impacts to streams that qualify as minor impact, and the project provides no more than 5 acres of wet meadow improvements; or
  - (2) The project involves maintenance of a nonexempt farm pond with a surface area greater than 3,000 SF but no more than 10,000 SF.

*Amend Env-Wt 523.04(b)(2) & (4) and (c)(2) & (4), eff. 12-15-19 (doc. #12805), cited and to read as follows:*

Env-Wt 523.04 Classification of Dredging Projects.

- (b)...(2) The wetland-impacted dredge area is less than 10,000 SF in area;
  - (4) For public waters, the proposed dredging will be 20 CY or greater but no more than 30 CY.
- (c)...(2) Will have 10,000 SF or greater of wetlands impacts;
  - (4) Will be located in a PRA, except as provided in Env-Wt 407.

*Amend Env-Wt 524.02(b), eff. 12-15-19 (doc. #12805), cited and to read as follows:*

Env-Wt 524.02 Approval Criteria for Residential, Commercial, and Industrial Development Projects. ...

- (b) The project avoids and minimizes impacts to wetlands, watercourses, and sensitive and valuable wetlands in accordance with Env-Wt 311.07 and Env-Wt 313.03;

*Amend Env-Wt 524.03(a)(2) intro and (3) intro, eff. 12-15-19 (doc. #12805), cited and to read as follows:*

Env-Wt 524.03 Application Requirements for Residential, Commercial, and Industrial Development Projects.

- (a)...(2) For all projects for which land will be subdivided, a plan prepared and stamped by a land surveyor licensed in the state of New Hampshire pursuant to RSA 310-A showing:
  - (3) For all projects for which land will be subdivided, the following clearly delineated on the plan required by (2), above:

*Amend Env-Wt 524.04(b), eff. 12-15-19 (doc. #12805), cited and to read as follows:*

Env-Wt 524.04 Design Requirements for Residential, Commercial, and Industrial Development Projects. ...

- (b) The project does not use wetlands or surface waters to serve as stormwater or water quality treatment;

*Amend Env-Wt 524.06(b), eff. 12-15-19 (doc. #12805), cited and to read as follows:*

Env-Wt 524.06 Classification of Residential and Commercial or Industrial Development Projects.

- (b) A project shall be an expedited minimum impact project only if:
  - (1) It is a minimum impact project to construct a new subdivision of 3 lots or less; and
  - (2) Meets the eligibility requirements for expedited permits under Env-Wt 306.03;

*Amend Env-Wt 526.06(e), eff. 12-15-19 (doc. #12805), cited and to read as follows:*

Env-Wt 526.06 Construction Classification for Dam Construction, Reconstruction, or Replacement Projects. ...

- (e) Projects shall be major projects if they impact a PRA, except as provided in Env-Wt 407, 200 LF or more of a surface water or banks of surface waters, or 10,000 SF or greater of a wetlands or bed and banks of surface waters; and



*Amend Env-Wt 526.07(a) and (b) intro, eff. 12-15-19 (doc. #12805), cited and to read as follows:*

Env-Wt 526.07 Classification for Dam Modification, Repair, or Maintenance Projects.

- (a) In-kind repair of an existing legal dam in the dry shall be a minimum impact project.
- (b) Repair of an existing legal dam that requires work in surface waters, banks of surface waters, or wetlands shall be a minor impact project unless:

*Amend Env-Wt 603.05 intro and (c), eff. 12-15-19 (doc. #12806), cited and to read as follows:*

Env-Wt 603.05 Vulnerability Assessment. In accordance with the NH Coastal Risk and Hazards Commission Science and Technical Advisory Panel (STAP) Report, Sea-level Rise, Storm Surges, and Extreme Precipitation in Coastal New Hampshire: Analysis of Past and Projected Future Trends, available at <http://www.nhcrhc.org/stap-report/>, as updated by the 2019-2020 New Hampshire Coastal Flood Risk Summary Part I: Science, available at <https://scholars.unh.edu/ersc/210/>, and Part II: Guidance for Using Scientific Projections, available at <https://scholars.unh.edu/ersc/211/>, Laws of 2016, 195:1, and best available science for projects located in coastal areas, the applicant shall:

- (c) Reference the projected sea-level rise from the 2019-2020 STAP report, Part I: Science, available at <https://scholars.unh.edu/ersc/210/>, and Part II: Guidance for Using Scientific Projections, available at <https://scholars.unh.edu/ersc/211/>, and use the best available science and more recent available projected sea-level rise information that most closely matches the end of the project design life and the project's tolerance to risk or loss;

*Amend Env-Wt 604.02(c), eff. 12-15-19 (doc. #12806), cited and to read as follows:*

Env-Wt 604.02 General Criteria for Tidal Buffer Zones.

- (c) Projects in or on a tidal buffer zone shall preserve the self-sustaining ability of the buffer area to provide habitat values, protect tidal environments from potential sources of pollution, provide stability of the coastal shoreline, and maintain existing buffers intact where the lot has disturbed area defined under RSA 483-B:4, VI.

*Amend Env-Wt 706.02(a), eff. 12-15-19 (doc. #12807), cited and to read as follows:*

Env-Wt 706.02 Requirements for Waiver Requests for Forestry Activities.

- (a) The applicant for a waiver under Env-Wt 706.01(a) shall submit a request for a waiver to the department at the same time the applicant submits the notification for an SPN or PBN or an application for an EXP or standard permit, as applicable, by submitting a completed Prime Wetlands Waiver Forestry & Other Activities, NHDES-W-06-088, dated May 2020.

*Amend Env-Wt 706.04(a), eff. 12-15-19 (doc. #12807), cited and to read as follows:*

Env-Wt 706.04 Requirements for Waiver Requests for Other Activities in Buffers.

- (a) The applicant for a waiver under Env-Wt 706.01(b) shall submit a request for a waiver to the department at the same time the applicant submits the notification for an SPN or application for a PBN, EXP, or standard permit, as applicable, by submitting a completed Prime Wetlands Waiver Forestry & Other Activities, NHDES-W-06-088, dated May 2020.

*Amend Env-Wt 803.05 intro, eff. 12-15-19 (doc. #12808), cited and to read as follows:*

Env-Wt 803.05 Proposal for In-Lieu Mitigation Payment. For a project for which compensatory mitigation is proposed as an in-lieu mitigation payment, the plan and report prepared pursuant to Env-Wt 803.01 also shall include:

*Amend Env-Wt 904.04(b), (c), and (d)(3), eff. 12-15-19 (doc. #12809), cited and to read as follows:*

**Env-Wt 904.04 Tier 2 Stream Crossings.**

(b) Subject to (c), below, any new tier 2 stream crossing and any replacement tier 2 stream crossing that does not meet the criteria specified for replacement in Env-Wt 904.08 shall be a span structure, pipe arch embedded with stream simulation, open-bottom culvert with stream simulation, or closed-bottom culvert embedded with stream simulation.

(c) The applicant may propose an alternative design for a new tier 2 stream crossing by submitting a request as specified in Env-Wt 904.10.

(d)...(3) Any tier 2 stream crossing that is repaired, rehabilitated, or replaced pursuant to Env-Wt 904.08.

*Amend Env-Wt 904.08(b) intro, eff. 12-15-19 (doc. #12809), cited and to read as follows:*

**Env-Wt 904.08 Repair, Rehabilitation, or Replacement of Tier 1 or Tier 2 Existing Legal Crossings.**

(b) A project to repair, rehabilitate, or replace a tier 1 or tier 2 crossing shall qualify under this section only if a professional engineer certifies that:

*Amend Env-Wt 905.07(b), eff. 12-15-19 (doc. #12809), cited and to read as follows:*

**Env-Wt 905.07 Certificate Renewal; Continuing Education Required.**

(b) To apply for renewal, a certified culvert maintainer shall submit an application for renewal as specified in (c) and (d), below, to the department no later than November 15 of the year of expiration.

**APPENDIX A: STATE AND FEDERAL STATUTES, FEDERAL REGULATIONS IMPLEMENTED**

<b>Rule Section(s)</b>	<b>State Statutes Implemented</b>	<b>Federal Statutes, Regulations Implemented</b>
Env-Wt 305.02(b)(2); 306.02(d); 306.05(a)(1) intro; 307.05(b); 307.10(b) & (g)(1); 307.11(i)(3); 307.12(e); 308.05(a)(3) & (c) intro; 308.06; 309.01(b)(3)b.; 309.02(c)(2) & (I) [new]; 309.04(b); 309.05(a); 309.06; 309.07 intro, (a), (b)(1), (f), (h), & (i); 309.08; 310.01 intro, (b)(1) & (h); 310.02 (a), (b), & (h); 310.03(c); 310.07(e); 311.01(e), (f), & (g) [new]; 311.02(e); 311.03(b)(6) & (10); 311.04 intro; 311.06(e); 311.07; 311.12(d) & (e) [new]; 311.13; 312.01; 312.04 intro; 312.05; 312.06 [new]; 313.03 (b) intro & (c) [new]; 313.04(a)(3)	RSA 482-A:1 - 4, 6, 8 - 34; RSA 483:8-a, III	Clean Water Act, 33 U.S.C. Chapter 26, Subchapter IV, § 1344 (Permits for Dredged or Fill Material); 33 CFR Parts 322 & 323; USACE Gen. Permit No. NAE-2016-02415
Env-Wt 406.03(a); 407.02(c), 407.03(b)(3)	RSA 482-A:1 - 4, 6, 8 - 34; RSA 483:8-a, III	Clean Water Act, 33 U.S.C. Chapter 26, Subchapter IV, § 1344 (Permits for Dredged or Fill Material); 33 CFR Parts 322 & 323; USACE Gen. Permit No. NAE-2016-02415
Env-Wt 510.02(e)(1); 510.04(b); 510.05(a)(4) intro; 511.02(b)(2); 511.04(c), (f)(2), (j), & (I); 511.06(a); 511.07; 511.08; 513.02(a); 513.03(a) intro; 513.04 (a) & (b); 513.05; 513.06 intro & (a)(5); 513.07(d);	RSA 482-A:1 - 4, 6, 8 - 34; RSA 483:8-a, III	Clean Water Act, 33 U.S.C. Chapter 26, Subchapter IV, § 1344 (Permits for Dredged or Fill Material); 33 CFR Parts 322 & 323; USACE Gen. Permit No. NAE-2016-02415

Rule Section(s)	State Statutes Implemented	Federal Statutes, Regulations Implemented
513.08 intro & (b); 513.11(a) intro; 513.12; 513.15(a), (d)(1), & (g)(3); 513.20; 513.21; 513.24 - 513.27; 514.02(a) & (c)(3); 514.03(d) intro & (1); 514.07(a)(3) intro, (b)(1), & (c)(2); 515.02; 515.03(d)(4); 515.05(d); 515.06(c)(1); 516.03(e); 517.01; 517.05(g); 517.06 (c)(1), (d) intro, & (f); 517.07(a); 517.08(a); 518.02; 518.07; 519.05(c)(1); 519.08(a)(5) & (c)(4); 519.09; 521.03 intro & (d); 521.04(a)(2) & (b); 521.06(a)(4), (b), & (c); 522.06(a)(4) & (7) and (b); 523.04(b)(2) & (4) and (c)(2) & (4); 524.02(b); 524.03(a)(2) intro & (3) intro; 524.04(b); 524.06(b); 526.06(e); 526.07(a) & (b) intro		
Env-Wt 603.05 intro & (c); 604.02(c)	RSA 482-A:1 - 4, 6, 8 - 34; RSA 483:8-a, III	Clean Water Act, 33 U.S.C. Chapter 26, Subchapter IV, § 1344 (Permits for Dredged or Fill Material); 33 CFR Parts 322 & 323; USACE Gen. Permit No. NAE-2016-02415
Env-Wt 706.02(a); 706.04(a)	RSA 482-A:1 - 4, 6, 8 - 34; RSA 483:8-a, III	Clean Water Act, 33 U.S.C. Chapter 26, Subchapter IV, § 1344 (Permits for Dredged or Fill Material); 33 CFR Parts 322 & 323; USACE Gen. Permit No. NAE-2016-02415
Env-Wt 803.05 intro	RSA 482-A:1 - 4, 6, 8 - 34; RSA 483:8-a, III	Clean Water Act, 33 U.S.C. Chapter 26, Subchapter IV, § 1344 (Permits for Dredged or Fill Material); 33 CFR Parts 322 & 323; USACE Gen. Permit No. NAE-2016-02415
Env-Wt 904.04(b), (c), & (d)(3); 904.08(b) intro; 905.07(b)	RSA 482-A:1 - 4, 6, 8 - 34; RSA 483:8-a, III	Clean Water Act, 33 U.S.C. Chapter 26, Subchapter IV, § 1344 (Permits for Dredged or Fill Material); 33 CFR Parts 322 & 323; USACE Gen. Permit No. NAE-2016-02415